

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA**

Sentino West,

Plaintiff,

v.

Fine Rugs of Charleston, Inc.,

Defendant.

Case No. 2:23-cv-6389-RMG

**ORDER**

This Title VII employment discrimination case is before the Court on the Report and Recommendation of the Magistrate Judge recommending the Court deny Defendant's motion to dismiss for lack of subject matter jurisdiction. (Dkt. No. 16). Defendant did not object to the Magistrate Judge's recommendation.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections is made. Additionally, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where the plaintiff fails to file any specific objection, "a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted).

Defendant moved to dismiss the complaint for lack of subject matter jurisdiction arguing that it is not an "employer" within the meaning of Title VII because it employs fewer than fifteen persons. (Dkt. No. 6). Quoting a United States Supreme Court case, the Magistrate Judge found

that the issue of whether an employer has fifteen or more employees is an element of a plaintiff's claim for relief not a jurisdictional issue. (Dkt. No. 16 at 1). Based on that finding, the Magistrate Judge concluded that the Defendant's motion was not properly brought via Rule 12(b)(1) and recommended denying Defendant's motion. (*Id.* at 1-2). After reviewing Defendant's motion to dismiss, the Report and Recommendation, and the controlling law, the Court finds that the Magistrate Judge ably addressed the issues in Defendant's motion and correctly concluded that the motion should be denied.

For the reasons set forth above, the Court **ADOPTS** the Report and Recommendation (Dkt. No. 16) as the Order of the Court and **DENIES** Defendant's motion to dismiss (Dkt. No. 6).

s/Richard Mark Gergel

Richard Mark Gergel  
United States District Judge

May 28, 2024  
Charleston, South Carolina